

**State of Colorado
Department of State**

ELECTIONS DIVISION



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SECRETARY OF STATE
February 26, 2007

2006 GENERAL ELECTION:

FINDINGS OF THE MONTROSE COUNTY GENERAL ELECTION INVESTIGATION

INDEX

<u>EXECUTIVE SUMMARY</u>	4
<u>PROCEDURAL BACKGROUND</u>	4
<u>JURISDICTION</u>	5
<u>ISSUES RAISED BY THE COLORADO SECRETARY OF STATE</u>	5
<u>FINDINGS OF FACT</u>	6
<u>LEGAL AUTHORITY</u>	10
<u>INVESTIGATION OF THE MONTROSE COUNTY 2006 GENERAL ELECTION</u>	11
<u>CONCLUSION</u>	15
<u>RECOMMENDATIONS</u>	20

LIST OF ATTACHMENTS

Attachment 1	Montrose County Canvass Certification
Attachment 2	Hand Totaled Canvass Results
Attachment 3	Amendments to Write-In Candidate Totals
Attachment 4	Amendment to Official Results
Attachment 5	Request for Security Plan dated October 4, 2006
Attachment 6	Delinquent Security Plan Follow-up E-mail dated October 23, 2006
Attachment 7	Security Plan Submission dated October 26, 2006 – 13 Pages Received
Attachment 8	E-mail from Debbie Rudy Indicating Completion/Submission of Security Plan date October 26, 2006
Attachment 9	Incomplete Notice A1 dated October 29, 2006
Attachment 10	Incomplete Notice B1 dated November 4, 2006
Attachment 11	Inventory Documentation received November 6, 2006
Attachment 12	Request for Documentation and Montrose County Response dated November 16, 2006
Attachment 13	Voting System Security – Incident Report
Attachment 14	Incomplete Notice C1 dated December 16, 2006
Attachment 15	E-mail Reply to Incomplete Notice C1 from Carol Kruse dated December 18, 2006
Attachment 16	Letter to Carol Kruse dated December 27, 2006 Requesting Information
Attachment 17	Response from Carol Kruse dated January 4, 2007
Attachment 18	MBB Content Screen Shots
Attachment 19	Polling Location CCC – Oath of Judges/Registration Verification/Certification
Attachment 20	Polling Location FH – Oath of Judges/Registration Verification/Certification
Attachment 21	Polling Location DMEA – Registration Verification/Certification
Attachment 22	Polling Location NHF – Oath of Judges/Registration Verification/Certification
Attachment 23	Polling Location PAV – Oath of Judges/Registration Verification/Certification
Attachment 24	Secretary of State Chain of Custody Logs
Attachment 25	Photo Documentation of Sealed VVPAT, Incomplete Chain of Custody Logs, Direct Record Equipment, Other Findings, Canvass Documentation, Unsecured Tally Computer, Mobile Ballot Box Cards, Various Security Breaches



February 26, 2007

Executive Summary

On December 16, 2006, after identifying several possible problems associated with the 2006 General Election in Montrose County, the Colorado Secretary of State concluded that the conduct associated with the Montrose County election needed to be reviewed. The decision was made based upon observations of the Secretary of State observer present in Montrose County on Election Day; discussions between Department of State staff and the Montrose County Clerk and Recorder and the Montrose County Elections Supervisor; and the convening of the Montrose Elections Fact Finding Task Force.

The investigation conducted by the Secretary of State revealed numerous and substantial problems related to the conduct of the 2006 General Election in Montrose County. The Secretary of State staff identified errors in the programming of voting machines; failure to conduct Logic and Accuracy Testing; failure to submit the required security plan; failure to secure voting equipment and election records as required by law; inconsistencies in the recording of voter information in the pollbooks; signature cards unaccounted for from Early Voting and Election Day; and a single point of knowledge in the elections supervisor.

During the investigation, the Secretary of State found no evidence of fraud or criminal misconduct by any person involved in the Montrose County 2006 General Election.

The Secretary of State recommends that appropriate changes to staffing, security, training, and document organization be addressed immediately. The Secretary of State reserves the right to monitor Montrose County through all upcoming elections to ensure that appropriate steps have been taken. Should the same pattern of issues continue, or arise again, the Secretary has the ability to seek judicial authority as provided by Colorado law to take over control of future elections.

Procedural Background

Prior to Election Day, November 7, 2006, the Office of the Secretary of State ("Office") received a request from Montrose County Clerk and Recorder Carol Kruse for an election observer registered as a Democrat. The Office honored the request by sending Rita Thaemert (Administrative Assistant) as an observer.

Ms. Thaemert subsequently provided a written report to John Gardner, Voting Systems Specialist, documenting her observations on Election Day. Thereafter a panel was convened by residents of the county to assess problems which occurred on Election Day. Mr. Gardner and Tim Bishop, Voting Systems Technician, were asked to provide testimony during one of the panel meetings which ultimately brought to light additional issues which the Office was not previously aware.

These additional issues prompted an investigation into the policies and procedures of the Montrose County Clerk and Recorder's ("Clerk") Office pursuant to § 1-1-107(2)(b), C.R.S. Contained herein are the details of the events leading to the investigation and the findings of the investigation.

Jurisdiction

Jurisdiction of the Office of Secretary of State is vested pursuant to § 1-1-107(2)(b), C.R.S., which specifically authorizes the Secretary of State to review the practices and procedures of elections in Colorado; therefore the Secretary of State has authority to review the procedures in the County Clerk and Recorder of Montrose County office, its employees and other election officials in the conduct of an election. Further, this Office is empowered to exercise any other powers or perform any other duties that are consistent with Article 1.5 of Title 1, C.R.S., and that are reasonably necessary for the proper administration, implementation, and enforcement of the Help America Vote Act ("HAVA")¹ and that will improve the conduct of elections in the state in conformity with HAVA.²

Issues Raised by the Colorado Secretary of State

Upon reviewing phone logs, the Election Day observers' report and conversations between Mr. Gardner and the Montrose County elections staff, the following issues were raised:

- (1) Why were there programming issues prior to and during Early Voting and the General Election?
- (2) How many databases were used by the county for the purposes of recording and tallying the results?
- (3) Were all votes cast counted? Do the canvass totals balance?
- (4) Why were the machines used in the 2006 Primary Election not reset prior to their use in the 2006 General Election?
- (5) Why did the county fail to conduct Logic and Accuracy Testing ("LAT")?
- (6) Why did the county not submit the required Montrose County Security Plan ("Security Plan") by the deadline?
- (7) Are there adequate security measures in place?
- (8) Why were there issues with the wrong ballot style being sent to voters?

¹ 42 U.S.C. 15512, et seq., (2002).

² See § 1-1.5-104(1)(f), C.R.S.

(9) Why was the division of duties set up to allow for a Single Point Failure?

Findings of Fact

October 4, 2006 – Security Plan Notification

The Office issued letters to all counties informing them of the change in security requirements pursuant to the ruling of Judge Manzanares of Denver District Court. Each county was notified of the new standards and the requirement to submit a new County Security Plan no later than October 20, 2006.

Included in the letter to the Clerk was a “Security Plan Status for Montrose County” detailing the items to be addressed by the county.

October 17, 2006 – Telephone Conversation with Kathryn Mikeworth

Debbie Rudy, Montrose County Elections Supervisor, called the Office and spoke with Kathryn Mikeworth, Ballot Access Lead. Ms. Rudy notified Ms. Mikeworth that six (6) ballots were sent to voters with an extra race on the ballot which voters were not eligible to vote on. The decision was made to duplicate the ballots, so as to exclude the erroneous race, upon the return of the voted ballot.

Ms. Rudy also spoke with Ms. Mikeworth about 28 ballots sent out to voters that were missing one question. The determination was made that Ms. Rudy should send an additional ballot containing only the missing question with instructions as to how to proceed. Additionally, Ms. Rudy was informed that the Clerk’s staff may be required to hand count the ballots when returned.

October 23, 2006 – Write-In Malfunction on DRE

Ms. Rudy contacted Wayne Munster, Deputy Director of Elections, to notify him that she was having issues with the write-in candidate function on the Direct Record Electronic Voting (“DRE”) machine. Ms. Rudy worked with Hart InterCivic (“Hart”) to determine the problem; the machines were then re-programmed and tested.

Ms. Rudy also contacted Mr. Gardner explaining that the write-in function was not appearing on the DREs. One of the Early Voting sites was inoperable for approximately four (4) hours, requiring voters to use paper ballots to cast their vote. Ms. Rudy created a new Hart database and reprogrammed all machines not displaying the write-in candidate option.

Mr. Gardner and Ms. Rudy also spoke about error messages appearing on some of the DREs being used for Early Voting. The two determined that the problem was due to the failure to reset those machines after the 2006 Primary Election in preparation for the 2006 General Election. Mr. Gardner questioned Ms. Rudy as to why the machines had not been reset; he learned that

Montrose County had not conducted its LAT as required by law.³ The failure to reset the machines would have been found prior to Early Voting had the LAT been conducted. Mr. Gardner, via telephone, assisted with the reprogramming of the software and supplied Ms. Rudy with explicit instructions on resetting the machines and conducting the Hardware Diagnostics Test. Mr. Gardner noted that Montrose would now have three (3) databases to reconcile on Election night.

October 26, 2007 – Montrose County Security Plan Submitted

Ms. Rudy sent, via facsimile, the Security Plan as required by order of the Denver District Court. The Office received thirteen (13) of the stated 26 pages. Mr. Gardner reviewed the received documentation and responded with an "Incomplete Notice A1" on October 29, 2006.

October 29, 2006 – "Incomplete Notice A1"

Mr. Gardner sent an "Incomplete Notice A1", via e-mail, to Ms. Kruse notifying her of items that were complete on her submitted Security Plan as well as items in need of further clarification. Ms. Kruse was given until the close of business on November 1, 2006 to submit the requested information.

October 30, 2006 – Telephone Conversation with Kathryn Mikeworth and Hilary Rudy

Ms. Rudy notified Ms. Mikeworth and Hilary Rudy, Legal Specialist, that five (5) incorrect ballot styles were provided to voters at an Early Voting site. The ballots were missing two (2) questions. The decision was made that a separate ballot with the two (2) missing questions would be provided to the voters.

November 1, 2006 – Telephone Conversation with Kathryn Mikeworth

Ms. Rudy notified Ms. Mikeworth that duplicate ballot packets were sent to voters. The decision was made that the Clerk's office would hold the ballots of those affected until the close of polls on Election Day then count the ballots so long as the voter only returned one of the two ballots sent.

November 3, 2006 – Internal E-mail

Theresa Holst, Temporary Employee at the Department of State, provided Mr. Gardner, via e-mail, with an update on the status of requested information related to Montrose County. The e-mail stated:

Debbie needs help regarding her Security plan. I told her to contact you or Tim and you would help her through it. Said she would when she "gets a chance" could be Monday.

³ Secretary of State Rule 11

Inventory: She will fax to SOS tonight 11/3/06

Election Set up File: Mailed 10-31-06

November 4, 2006 – “Incomplete Notice B1”

Mr. Gardner sent an “Incomplete Notice B1” dated November 3, 2006, via e-mail, to Ms. Kruse notifying her of items that were complete on her submitted Security Plan as well as items in need of further clarification. Ms. Kruse was asked to submit the information as soon as possible noting that the Office records indicated that she had yet to respond to the previous request.

November 7, 2006 – Election Day Observers Report/Communication with the Office

Ms. Thaemert arrived at the Clerk’s office at 6:20 a.m. on Election Day. Ms. Thaemert reports that at 7:00 a.m., the opening of the polls, the Clerk’s office was notified that the Valley Baptist polling location was experiencing problems with the voting equipment. A representative from Hart was dispatched to the Valley Baptist polling location, where Ms. Rudy was waiting, to assess the situation. While the equipment was being assessed, voters were asked to go to the Montrose County Courthouse (“Courthouse”) to cast their vote. The staff utilized Ballot Now to print the appropriate ballot; this caused additional delays for voters. At approximately 11:00 a.m. the equipment was operational and ready for use by the voters; the issue was rectified by a citizen who noticed that the connection of a cord was incorrect.

The Clerk’s office was also notified that the voting equipment at Friendship Hall was not working. Again, the voters were requested to go to the Courthouse to cast their vote. By early afternoon the Hart representative and Ms. Rudy once again had the equipment functioning.

The voting machines at the Pavilions polling location also ceased working sometime mid-afternoon. Ms. Rudy and the representative from Hart attempted to get the machines operational again, however at least four (4) of the machines remained inoperable for the remainder of Election Day, although eight (8) other machines were operable. While the machines were inoperable, voters were once again sent to the Courthouse to vote. The voters that remained at the Pavilions location were provided with paper ballots; when those ran out voters were given sample ballots.

Ms. Thaemert reported that Ms. Rudy was not present in the Clerk’s office much of Election Day and that the staff was not certain as to her whereabouts or the source of the equipment failures. At approximately 9:00 p.m. Ms. Rudy reported that the source of the problems was not a mechanical issue but rather operator error.

Teams of election workers duplicated more than 350 sample ballots voted on at the Pavilions polling location and finished duplication around 3:45 a.m. At that time, about 900 of the approximately 6800 ballots had been scanned.

November 20, 2006 – Request from the Montrose Elections Fact Finding Task Force/Receipt of Records

The Montrose Elections Fact Finding Task Force (“Task Force”) contacted Mr. Gardner requesting his presence at the December 14, 2006 meeting. Mr. Gardner was asked to prepare a presentation on issues related to the 2006 General Election in Montrose, and more specifically those involving the Hart Voting System.

Mr. Bishop notified the Clerk that the Office had received the election setup records. As previously stated in the e-mail from Ms. Holst to Mr. Gardner, Ms. Rudy notified the Office on November 3, 2006 that said records had been mailed on October 31, 2006.

December 14, 2006 – Meeting with County Clerk/Montrose Elections Task Force Meeting

Mr. Gardner and Mr. Bishop traveled to Montrose to appear at the Task Force meeting on behalf of the Secretary of State. Prior to the meeting with the Task Force, Mr. Gardner and Mr. Bishop met with Ms. Kruse and Ms. Rudy.

Mr. Gardner and Mr. Bishop spoke with Ms. Kruse, Ms. Rudy, and the elections staff for approximately 15 minutes. The Clerk’s staff was primarily interested in the information that would be presented to the Task Force. The group discussed the fact that the Security Plan was still not complete as well as problems associated with Election Day. Ms. Rudy commented that the county had experienced only a few small problems associated with the election, and she felt as though they were unfairly being “picked on”. She then asked Mr. Gardner if any other counties had experienced delays in voting or other problems on Election Day. In speaking further with the Clerk’s staff, Mr. Gardner was alerted to the fact that the number of voting databases used in the election was two more than had been provided to the Secretary of State by the Clerk.

At the Task Force meeting, Mr. Gardner and Mr. Bishop addressed issues presented to the Office leading up to and including Election Day by Montrose election staff. Additionally, the two answered questions posed by members of the Task Force.

December 15, 2006 – Internal Discussion

Upon returning to the office, Mr. Gardner spoke with Mr. Munster and Stephanie Cegielski, Legal Specialist, regarding the meeting. A determination was made that the Secretary of State should be made aware of the scope of the problems discovered regarding Montrose County.

December 16, 2006 – “Incomplete Notice C1”

Mr. Gardner sent an “Incomplete Notice C1”, via e-mail, to Ms. Kruse notifying her of items that were complete on her submitted Security Plan as well as items in need of further clarification. Ms. Kruse was notified that Montrose County was out of compliance and asked to submit the information as soon as possible.

Mr. Kruse responded to Mr. Gardner's e-mail stating that "[w]e are currently finishing up the elements that were deficient. You will receive it this week."

December 19, 2006 – Internal Meeting

The Secretary instructed Ms. Cegielski to draft a letter requesting information from County Clerk & Recorder Carol Kruse related to Election Day. The information was to be used to conduct an investigation. The letter, dated December 27, 2006, was written by Ms. Cegielski and signed by Holly Lowder, Director of Elections. The letter was provided to Ms. Kruse via fax, e-mail and certified mail.

January 10, 2007 – Internal Discussion/Telephone Conversation with Fran Long

Mr. Munster, Mr. Gardner and Ms. Cegielski discussed the timing of traveling to Montrose to gather the necessary information in order to conduct an investigation of the election procedures. A determination was made that Mr. Gardner and Mr. Bishop would travel to Montrose on January 11 and 12, 2007 and return with all requisite information. Mr. Munster, Mr. Gardner and Ms. Cegielski spoke via telephone with Fran Long, the new County Clerk & Recorder, and Robert Hill, the County Attorney for Montrose, and advised the two of the visit.

The Secretary of State staff also asked Ms. Long if she had knowledge as to whether or not the Security Plan had been submitted for review. Ms. Long informed the staff that she had seen a certified mail receipt copy in the office and assumed that the document had been sent. As of this date, January 10, 2007, this Office had not received the Security Plan.

Legal Authority

The right to vote is fundamental to our democracy. The Colorado Constitution requires the general assembly to "pass laws to secure the purity of elections, and guard against abuses of the elective franchise. The general assembly has delegated this responsibility to the Secretary of State.

Section 1-1-107, C.R.S., authorizes the Secretary of State:

(2)(b) To inspect, with or without the filing of a complaint by any person, and review the practices and procedures of county clerk and recorders, elections commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections and the registration of electors in this state.

Section 1-1.5-104, C.R.S., gives the Secretary of State investigatory authority:

(2)(a) Acting either upon his or her own initiative or upon a complaint submitted to him or her giving the secretary reasonable grounds to believe that an election in

this state is not being conducted in accordance with the requirements of HAVA or of this code, the secretary may investigate the allegation of noncompliance.

Colorado Secretary of State Investigation of the Montrose County 2006 General Election

Investigation Procedure – Data Gathering

January 11, 2007 – Day 1 of Data Gathering

Mr. Gardner and Mr. Bishop arrived at the Clerk's office at approximately 11:00 a.m. They met with Ms. Long and Ms. Rudy and outlined the list of items to be gathered, with Mr. Gardner focusing on the paper items and Mr. Bishop focusing on the electronic items. At this time Ms. Long informed the Secretary of State representatives ("Representatives") that the signature cards and the information contained within the pollbooks did not appear to balance. Ms. Rudy informed the representatives that the judges at the polling locations had a difficult time reporting consistently. Problems included voters signing the wrong line in the pollbook; judges recording information on the wrong line in the pollbook; no notes written in the pollbook to tie it back to the signature card; a pollbook entry exists but there is no coordinating signature card.

Mr. Gardner then requested all Mobile Ballot Box cards ("MBB"), at which time Ms. Rudy entered a locked room and returned with ten (10) MBBs. Ms. Rudy presented the MBBs to Mr. Gardner unsealed and not stored in a security canister as required in the Security Plan pursuant to Secretary of State Rule 43. The Representatives utilized a copy of the Elections databases provided by the Clerk's office on November 20, 2006, to ensure that all MBBs had been provided. Upon comparing the databases to the number of MBBs provided by Ms. Rudy, Mr. Gardner determined that five (5) MBBs were unaccounted for. Ms. Rudy once again proceeded to the locked room and returned with four (4) additional MBBs, two of which were not for the 2006 General Election. At this time, the Representatives labeled all MBBs provided to them and recorded the information on a Chain of Custody Log ("Log"), in order to establish a chain of custody and to ensure that all materials were accounted for and returned to the Clerk. Mr. Gardner notified Ms. Cegielski of the unsecured MBBs and asked whether or not to proceed; Ms. Cegielski and Mr. Munster advised Representatives to continue collecting information and document all security breeches.

Ms. Rudy continued to look for the three (3) missing MBBs but only as she "remembered" the request from Representatives. It appeared to Mr. Gardner that due to Ms. Rudy's disorganization she often forgot what items Representatives had requested from her, even though she had been provided both a handwritten and a typed checklist of requested items upon the arrival of Representatives.

Mr. Gardner noted that the MBBs did not have the required permanent seal and that there was no documentation associated with their transfer or with the number of cards used so as to confirm that all were provided, as required by the Security Plan. Additionally, the manner in which the MBBs were labeled was inconsistent with the data on the MBB. Some of the MBBs were labeled as test cards, but Ms. Rudy informed Representatives that the cards were used on

Election Day. Other labeling issues included MBBs labeled as audio only cards, but they contained votes; cards labeled as Early Voting or Election Day, but when inspected it was determined that the cards applied to neither. Ms. Rudy told representatives that she would know what was represented on each MBB based upon the number of votes on the MBB, however when presented with the information she could not recall how or where the MBB was used.

Ms. Rudy continually produced MBBs throughout the day for the Representatives to copy. The Representatives indicated that it appeared that Ms. Rudy was increasingly confused as she tried to recollect which cards performed which function. Representatives discovered some MBBs in test mode, one with 99 votes cast on it; MBBs with election IDs that did not match the databases provided; and no consistency in the labeling on the MBBs.

While Mr. Bishop made copies of the MBBs, Mr. Gardner spoke with Ms. Rudy and requested a hard copy of the Security Plan. Ms. Rudy indicated that she had mailed the plan to the Office in early January and that someone in the Office had signed for it, but produced no evidence in support of such. Mr. Gardner stated that the document had not been given to him and requested that Ms. Rudy provide him a hard copy while he was in the Clerk's office. Ms. Rudy did not immediately provide a copy of the Security Plan, in fact Mr. Gardner witnessed the Security Plan on Ms. Rudy's computer screen and hard copy on her desk while she was at her desk working. Additionally, as Mr. Gardner noticed that Ms. Rudy appeared to still be attempting to complete the Security Plan, she commented that she was in the process of finishing it so as to provide him a copy before his departure. Once again, Mr. Gardner contacted Ms. Cegielski, this time notifying her of the issue of the incomplete Security Plan.

Mr. Gardner requested voter count reports for Absentee, Early Voting and Election Day from the Integrity system while Mr. Bishop collected screen shots from the System for Election Verification of Operations⁴ ("SERVO") application in order to identify the content of each MBB.

At approximately 1:00 p.m. Mr. Bishop requested information from the Clerk's staff related to the Tally software. The Tally software counts all votes recorded on an MBB and provides a total of all votes cast. Lura Kuchyt, Clerk's office election staff member, informed the Representatives that the system was password protected and only Ms. Rudy possessed the password. Representatives decided to attempt to access the system by using a blank password, and were successful. Representatives then created a valid password, locked the computer and went to lunch. Mr. Gardner, again, contacted Ms. Cegielski to notify her of the discovery of the blank password. Prior to leaving for lunch, Representatives sealed all materials collected to that point, signed the seals and recorded the information on Logs.

At approximately 2:00 p.m., Representatives spoke with Ms. Long about the missing MBBs but were unable to proceed because Ms. Rudy needed to be included in the conversation and to locate the missing MBBs. Representatives then requested the Judge's Booth Controller⁵ ("JBC") tapes from Ms. Kuchyt; which once again required the involvement of Ms. Rudy. It took Ms. Rudy and Ms. Kuchyt approximately one (1) hour to gather the information. When the tapes were presented to Mr. Gardner they were in zip lock bags placed in a cardboard box with no

⁴ SERVO is used to back-up, reset, and maintain inventory of the Hart election equipment.

⁵ The JBC houses the MBB which records the votes cast on the DRE.

seals or Logs. Ms. Rudy provided eighteen (18) zip lock bags (two (2) bags each for seven (7) polling locations and two (2) Early Voting sites) and informed Representatives that the tapes were separated by polling location and the label on the zip lock bag indicated the polling location. Mr. Bishop began reviewing the tapes and discovered that the tapes did not match the labeled bag that they were packaged in. Mr. Bishop also noted that the zero tapes run for each location (for each JBC) were not signed by the Election Judges for several locations, and four (4) of the seven (7) tapes showed either a gap in data or no data at all. Additionally, no results tapes were provided for two (2) of the locations; no reconciliation form was provided for four (4) of the locations; and absolutely no tapes were provided for Early Voting locations.

While Mr. Bishop continued making electronic copies of the electronic data provided, Mr. Gardner photocopied the pollbooks, which were organized by polling location, and then continued on by photocopying all signature cards. Mr. Gardner noted that the signature cards were stacked in piles on at least four (4) desks and no tracking or storage information existed. The piles were not labeled with polling location, were in no logical order, and the staff was unaware of whether or not the card had been checked against the pollbook. Ms. Rudy explained that the signature cards were stored by polling location, however the combination of numbers recorded on each card did not support her claim. Mr. Gardner noted, while photocopying the pollbooks, that at least 100 names had flags next to them with no written documentation as to why. Mr. Gardner discovered that the flags represented one of a number of possible reasons: no ID; wrong ID; non-matching ID number; voter voted a provisional ballot; or voter filled out a sample ballot. Mr. Gardner notified Ms. Cegielski that there were a number of instances where ID was missing or incorrect as listed in the pollbook.

At approximately 4:10 p.m., Mr. Gardner notified Ms. Cegielski that he was still missing two (2) MBBs, with no explanation from the Clerk's staff, and that Ms. Rudy could not be found.

Copying of the signature cards continued until 9:00 p.m. Ms. Rudy, Ms. Kuchyt and Evelyn Blanchard, another Clerk office elections staff member, left the office at approximately 8:00 p.m., and Representatives and Ms. Long left at approximately 9:00 p.m.

January 12, 2007 – Day 2 of Data Gathering

Representatives arrived at the Clerk's office at 8:15 a.m. Upon arriving, Representatives spoke with Ms. Long and updated her on what items they still needed to collect, including two (2) MBBs. Representatives then continued copying paper and electronic records while waiting on Ms. Rudy to provide the requested documentation.

While reviewing the MBBs, Ms. Rudy verbally accused Representatives of erasing data from one of the cards. County Attorney Robert Hill was promptly notified; shortly thereafter Mr. Hill arrived at the Clerk's office and questioned Mr. Gardner and Mr. Bishop. Representatives provided Mr. Hill with all documentation collected to that point so as to illustrate that no information had been, or could have been, erased as alleged. Ms. Rudy was asked to ensure that the information was not on another MBB; she expressed her certainty that it was not, then searched for additional MBBs. Upon further investigation, she located the MBB with the votes, and Mr. Hill promptly left the office.

At approximately 9:30 a.m. Mr. Gardner requested access to the DREs so as to photograph their storage and seals; however, Ms. Rudy denied him access to the equipment, without offering a reason. Mr. Gardner then phoned Ms. Cegielski requesting guidance; shortly after making the call, and prior to a response as to how to proceed by Ms. Cegielski, Mr. Gardner was granted access to the electronic voting equipment. No explanation was offered by Ms. Long or Ms. Rudy as to why he had previously been denied access.

While photographing the equipment, Mr. Gardner was informed that the Election Day Verified Ballot Option⁶ ("VBO") was sealed inside each DRE case rather than stored and sealed with the other election records as required by law.⁷ The Clerk's office informed Mr. Gardner that they routinely leave the VBO in the machine until the next election; this is not in compliance with Secretary of State Rules⁸.

Ms. Rudy provided Representatives with the Cast Vote Record ("CVR") reports. Representatives asked Ms. Rudy if she had provided them all information requested related to the CVR. Ms. Rudy responded in the affirmative, at which time the Representatives asked her to explain how she was certain that all information had been provided. She could not confirm that she had provided all the records. Representatives reviewed the reports from 11:30 a.m. to 2:30 p.m. and determined that they did not possess all the records for the CVR. Ms. Rudy stated that she had been unable to create a back-up, previously or at the time of the request, in order to capture all the records. Mr. Bishop asked if he could attempt to make a back-up and was immediately successful at doing so. While the CVR reports were being reviewed, Representatives realized that they were still missing JBC tapes from three (3) machines. Representatives learned that no record existed for Early Voting, leaving only two (2) missing tapes. Once the data was received, the Representatives sealed all boxes containing documents, both paper and electronic, and signed the accompanying Log.

Representatives left the Clerk's office with all photocopied, electronic, and photographic documentation, in sealed boxes, at approximately 3:20 p.m.

Information Obtained by Representatives

Electronic Copies of:

- BOSS Databases - all five (5) databases used in the election (only three (3) had previously been provided to the Secretary of State)
- Ballot Now Databases
- Some of the MBBs used in the election
- Tally Databases

⁶ The VBO is the voted Verifiable Paper Audit Trail ("VPAT").

⁷ 8 CCR 1505-1 Colorado Secretary of State Election Rules, Rule 11. See also § 1-7-802, C.R.S.

⁸ 8 CCR 1505-1 Colorado Secretary of State Election Rules, Rule 11.6.3 (Storage).

Paper Copies of:

- Seven (7) pollbooks
- Early Voting and Absentee Vote Credit from Integrity
- Approximately $\frac{3}{4}$ of the Signature Cards

January 16, 2007 – Internal Meeting

Mr. Gardner and Ms. Cegielski met to discuss the Representative's experience in Montrose. The two discussed, in detail, the findings and the information gathered while Representatives were at the Clerk's office.

Ms. Cegielski took possession of the documents collected and began organizing the information to be audited. Ms. Cegielski and Mr. Bishop recorded seal numbers and signed all Logs associated with the collected information prior to the breaking of any sealed documents.

Conclusion

The Secretary of State's investigation disclosed the following problems:

Security

Pursuant to Rule 43 of the Secretary of State Rules and §1-5-616(5), C.R.S., all counties are to file, with the Secretary of State, security procedures that meet the minimum standards set forth in the rule. Rule 43.7 sets forth the minimum standard to include: seals; procedures used to maintain physical security; internal controls for the voting system including software and hardware access controls and password management.

While at the Clerk's office collecting documents, Mr. Gardner documented, by photograph and in writing, a number of security violations. The violations were as follow:

- Ballot Storage Room – the room contains voted ballots; Ballot Origination Software ("BOSS") application; and video equipment and video recording records.
 - The door to the room was locked when Representatives arrived, but after Ms. Rudy unlocked the door to retrieve requested information it remained unlocked for the rest of the day. Representatives and Ms. Long confirmed that the door was not locked prior to leaving at 9:00 p.m.
 - No facility access logs, as required in part 2(b)(6) of the Security Plan, were found or provided by the Clerk's staff to Representatives.
- MBBs
 - The Clerk's office did not comply with any of the requirements relating to MBBs in part (a) of the Security Plan.
 - No permanent label was placed on the MBBs.

- Chain of Custody
 - No Logs for JBCs.
 - Logs that did exist, did not contain signatures and were not updated.
 - No Logs for MBBs.
 - No Logs for DREs.
- DREs
 - Only some of the machines were properly sealed in accordance with Secretary of State Rules.
 - Voted VBOs were still in the DRE in violation of state law.
- JBCs
 - Only two (2) of the four (4) sides were sealed, as required.
 - No seals were placed on the memory card slots.
- Other
 - Blank password on the Tally computer.
 - Tally computer located near a door accessible to the public.
 - Equipment in need of repair is sent off-site unsealed and without chain of custody documentation.
 - No Logs for receipt or return of equipment or other election related materials.
 - No paper ballot backups.
 - Security cameras were in use and operating as prescribed by the Security Plan, however there were no cameras pointed on the Tally equipment.

Additionally, as previously mentioned, as a result of the *Conroy v. Dennis*⁹ lawsuit, every county in the State of Colorado was required to submit a new security plan to be approved by the Secretary of State. The plan was to address specific requirements as set forth in Rule 43 as well as agreed upon by plaintiff's counsel. The security plan was to be submitted for approval no later than October 20, 2006.

As previously stated, Montrose County submitted their Security Plan via facsimile on October 26, 2006, however, only a portion of the plan was received. The Clerk's office did not follow the facsimile with a hard copy so this Office cannot make a determination as to whether or not the entire Security Plan was sent. This Office followed up with "Incomplete Notice A1" on October 29; "Incomplete Notice B1" on November 4; "Incomplete Notice C1" on December 16; by phone on January 10, 2007; and in person on January 11 and 12.

The lack of response from the Clerk's office regarding the Security Plan is of concern, especially in light of the flagrant violations of the required security procedures as noted above.

Representatives inspected an Election Day machine on display at the office containing a JBC tape from Election Day, which should have been sealed as part of the election records, and noticed that seals were being used improperly and not as recommended by the Office. The eSlate unit (DRE) was not sealed on all four (4) sides and the JBC unit was only sealed on two (2) sides, once again not in compliance with rules promulgated by the Secretary of State¹⁰.

⁹ Case No. 06 CV 6072 (2006).

¹⁰ 8 CCR 1505-1 Colorado Secretary of State Election Rules, Rule 43

Montrose County keeps most of the BOSS and Ballot Now equipment behind a security door which only Ms. Rudy has access to. Ms. Rudy was out of the office most of the day, leaving the security door unlocked. It remained unlocked, and accessible to everyone in the office, throughout the day. Additionally, the Tally computer sits approximately ten (10) feet from the public entrance into the Elections department. The Tally software counts all votes recorded on an MBB and provides a total of all votes cast. The software also allows for a user to change totals, e.g. adding or subtracting votes associated with a write-in candidate. The Tally computer did not require a password, security cameras were not fixed on the computer, and the CPU was easily accessible to all Clerk's office staff and the public.

Mr. Gardner noted that the DREs were not centrally located in one room but rather in multiple rooms with no supporting documentation. This illustrates the poor manner in which the Clerk's staff manages, tracks, inventories and secures their voting equipment and election records.

Issues Related to Operation of Voting Equipment

When Montrose County purchased their DREs from Hart, the decision was made to also purchase the programming software rather than have Hart program the equipment prior to an election. This Office does not see an issue with such a decision, however, the programming by the county proved to be more difficult than anticipated and resulted in a number of avoidable errors.

Ms. Rudy had multiple issues with correctly programming the DREs for write-in candidates. When programming the voting machines, she programmed write-in candidates in the same manner as regular candidates instead of selecting 'Write-In' in the software. This error allowed the voter to select 'Write-In' on the ballot but did not allow for the write-in name to be entered using the keyboard function on the DRE, instead it merely filled the oval as though the voter was voting for candidate 'Write-In'.

§ 1-7-509, C.R.S., and Secretary of State Election Rule 11 require each county to conduct LAT and also set forth the manner in which the LAT is to be conducted. In fact, Secretary of State Election Rule 11.5.1 states that a Hardware Diagnostic Test and a LAT are to be conducted prior to each election. Montrose County did not conduct the required LAT and there is question as to whether or not the Hardware Diagnostic Test was conducted.

The error messages which appeared on some of the DRE machines during the first day of Early Voting were a result of the machines not being reset after the Primary Election. The failure to reset the machines is not only irresponsible but also a failure to perform the duties required in preparation for an election.

Due to the number of issues the Clerk's staff experienced in programming the voting machines, additional databases were required to be created so as to ensure accurate tallying of the votes. Secretary of State Election Rule 11.7.1 requires the county to submit all election setup records to the Secretary of State "no later than 5:00 pm on the seventh (7th) day prior to any election." Not only were only three of the five databases used provided to this Office, but they were not provided until November 20, 2006, nearly two (2) weeks after the General Election.

Signature Card/Pollbook/Election Judges

Following the return of Representatives with the documentation acquired while at the Clerk's office, Secretary of State personnel attempted to reconcile the photocopied signature cards to the photocopied pollbooks.

In reviewing the information, several discrepancies were identified:

- Approximately 650 discrepancies between the date on the signature card and the date a voter voted in Early Voting were found.
- The pollbook indicates sending of an absentee ballot and the date on which it was mailed, however there is a signature card signed on Election Day. The pollbook does not reflect that the absentee ballot was ever cancelled nor does it note why the voter was allowed to vote at the polling location on Election Day.
- The voters who were sent to the Courthouse to vote due to problems at their voting location are not identified in the pollbook. There is no manner in which to identify these individuals to ensure that they were properly given credit for voting or for ensuring that they did not cast an additional ballot.
- Representatives noted as many as 100, or more, voters with Post-It flags beside their name in the pollbook. Again, there is no documentation as to why these individuals were flagged. As previously stated, Clerk staff indicated that the flag represented a number of possible issues to include: no ID presented; wrong ID presented; non-matching ID number; the voter voted a provisional ballot; or the voter voted a sample ballot. None of these reasons were documented in the pollbook or on the signature card, and the staff was unable to say which issue pertained to which voter and the resolution.
- The total number of signature cards photocopied by Representatives was approximately 800 short of the total votes cast on Election Day in Montrose County for the 2006 General Election. Due to the disorganization of signature cards at the Clerk's office it is impossible to determine if the county is missing the signature cards or if they were simply misplaced and therefore not copied.

Other

The manner in which records related to the 2006 General Election were maintained is not pursuant to Colorado law and was incredibly disorganized at the time Representatives arrived to gather requested documentation. The signature cards were scattered on desks throughout the Clerk's office and were in no logical order; the MBBs were not clearly marked or identifiable and despite several attempts to provide Representatives with all cards used in the election some remain missing; and the JBC tapes were mislabeled and not readily available for review, nor were all the tapes provided. Mr. Gardner asked to inspect the certification documents, at which time Ms. Rudy spent approximately an hour looking for the information so as to provide documentation to the Representatives.

The Clerk's office experienced a number of difficulties prior to Election Day related to incorrect ballots and duplicate ballots being sent to voters. Ms. Rudy requested help from this Office on

several occasions regarding ballots without questions being sent to voters; ballots with extra questions being sent to voters; duplicate ballot packets sent to voters; and incorrect ballot styles being provided to voters during Early Voting. All this despite the fact that the county only used six (6) ballot styles for the 2006 General Election.

The problems experienced by the Montrose County Clerk and Recorder were further amplified by allowing for a Single Point of Knowledge, which ultimately may lead to Single Point Failure, as in this case. Ms. Rudy appears to have sole knowledge and access to records and documentation associated with any and all elections in Montrose County. This makes documentation retrieval near impossible in her absence and allows for potentially fraudulent problems to easily occur. With so many moving parts in an election, it is critical to have more than one person with first-hand experience and knowledge of the procedures and equipment should problems arise. No one person can – or should – be solely responsible for the entire process. While fraud was not found in this case, a Single Point of Knowledge can increase the likelihood that an attempted fraud occur, and is successful.

Post-Election Issues

Since the certification of the election, Ms. Rudy has been experiencing a number of issues with the Sequoia Integrity (“Integrity”) system. Staff from the Secretary of State’s Office, as well as Sequoia, have been assisting Ms. Rudy in trying to rectify these problems. According to Ms. Rudy, voters in Montrose County are being listed as inactive¹¹ when in fact they voted in the 2006 General Election. The Clerk’s office mailed postcards to voters whose status changed to inform them of such change. Some of the voters notified the Clerk’s office that they had in fact voted in November and were now concerned that their vote did not count.

Ms. Rudy has alleged either a fault in Integrity or with the report run by this Office; however we are unaware of any other county who uses the Integrity system experiencing the same problem, and the report that is generated by this Office is a direct result of the information entered by the county whereby giving the voter credit for voting. Only one other county has notified this Office of notification in error, and that county is not on the Integrity system and admitted that the parameters used in generating the report were incorrect.

During the time Representatives were collecting documentation, the Montrose staff was very protective of information and somewhat secretive regarding the release of requested information. Additionally, the staff failed to produce requested information in a timely fashion. Representatives noticed that both Ms. Rudy and Ms. Kuchyt would disappear for an hour or longer when attempting to locate requested items.

Representatives experienced a number of difficulties in obtaining information from Ms. Rudy. She denied access on a number of occasions and was seen going into rooms and quickly closing the door behind her in an effort to locate information without Representatives witnessing her actions.

¹¹ § 1-2-605, C.R.S.

IT IS IMPORTANT TO NOTE THAT THE SECRETARY DID NOT FIND ANY EVIDENCE THAT THESE VIOLATIONS UNDERMINED THE SECURITY OR INTEGRITY OF THE 2006 ELECTION IN MONTROSE. HOWEVER, THE FACT THE OUTCOME OF THE ELECTIONS WAS NOT JEOPARDIZED DOES NOT DIMINISH THE NEED TO CORRECT THESE PROBLEMS.

Recommendations

The County Clerk and Recorder is the Designated Election Official ("DEO"), as prescribed by law, and is to adhere to the state election code as defined in Title 1 of the Colorado Revised Statutes as well as the rules promulgated by the Secretary of State. Since the responsibility falls on the DEO, it is important to have the proper safeguards in place to ensure compliance with the law. The Single Point of Knowledge issue should be dealt with immediately so as to disperse knowledge throughout the office.

The appropriate changes to security, staffing, and responsibilities must be addressed immediately. This Office, having documented the issues arising out of the 2006 General Election, will be monitoring the county in all subsequent elections. Should the same pattern of issues continue or arise again, the Secretary of State may seek judicial authority as provided by Colorado law to take over control of the election.

Security

The lack of security, as documented by the attached photographs, is not only in violation of state law but also lends itself to questions of integrity and fraud. The Clerk's office has submitted a Security Plan which has been approved by the Secretary of State; the next step is the implementation of said Security Plan. The staff of the Office is available to assist with recommendations and aid in implementation so as to ensure all requirements are met and future elections are not at risk.

Training

One of the key elements to a successful election is the knowledge possessed by Election Judges. Proper, and thorough, training of these men and women is a critical piece of election preparation. The Clerk's staff admitted that inconsistencies in pollbook recording by the Election Judges, and this Office found discrepancies with the supporting pollbook documentation. The Oath for Judges, Registration Verification and Certifications/Record of Assistance for Disabled Voters was missing, incomplete or partially complete at each of the seven (7) polling locations. This issue can be addressed through better judges training.

The vast number of difficulties, with both the DREs and Integrity, experienced by the Clerk's office is concerning to this Office. As a result, additional training with both Hart and Sequoia is recommended. Training with these vendors should not be limited to one staff member, but rather additional staff since knowledge on each system would better serve the county and the voters.

The Elections Division of the Secretary of State's Office conducts HAVA and election law training sessions for county clerks as well as their elections staff. It is recommended that the Clerk and key staff members participate in the trainings, and ensure the achievement of a diverse coverage of all courses. This Office will be conducting an Elections 101 training on March 21 and 22, 2007 as well as HAVA Certification courses in April and June of this year. Additionally, this office encourages the Clerk to review the election laws prior to any election to ensure compliance.

This Office further recommends that Clerk's staff attend the various clerks' conferences during the year. The meetings will afford the opportunity to meet clerks throughout the state and provide a valuable source of reference as election time approaches.

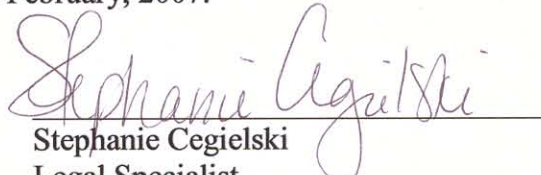
Other

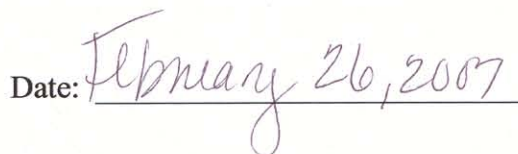
The lack of organization within the office in general, as well as with the election records, should be addressed immediately. Signature cards were scattered throughout the office in stacks that had no meaningful order. Additionally, the presentation of requested documents and storage of voting equipment was substandard. A logical and organized manner of storing election records should also be implemented immediately. Doing this will ensure integrity of the records while being stored for the required 25 months.

This Office further recommends the Clerk consider hiring an outside audit firm to assess the processes and procedures within the Elections Division of the Montrose County Clerk and Recorder's Office.


Implementation of the aforementioned recommendations is the start to ensuring safe and secure elections in Montrose County, as well as the restoration of voter confidence in the process and the Montrose County Clerk and Recorder.

RESPECTFULLY SUBMITTED this 26th Day of February, 2007.


Stephanie Cegielski
Legal Specialist
Office of the Secretary of State

Date: 

APPROVED:


Mike Coffman
Colorado Secretary of State